

CENTER FOR DISABILITY ACCESS
Raymond Ballister Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Amanda Seabock, Esq., SBN 289900
Zachary Best, Esq., SBN 166035
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

PRS Hotel Group, LLC, a
California Limited Liability
Company;

Defendant,

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of PRS Hotel Group, LLC, a California Limited Liability Company; ("Defendant"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a quadriplegic. He uses an electric wheelchair for mobility.

2. Defendant PRS Hotel Group, LLC, a California Limited Liability Company; owns and operates the Comfort Inn Carmel By The Sea located at

1 Ocean Ave &, Torres S Carmel-By-The-Sea, California currently and at all
2 times relevant to this complaint.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein, is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of other
11 Defendants are ascertained.

12 **JURISDICTION:**

13 4. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 5. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23 **PRELIMINARY STATEMENT**

24 7. This is a lawsuit challenging the reservation policies and practices of a
25 place of lodging. Plaintiff does not know if any physical or architectural
26 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
27 violated any construction-related accessibility standard. Instead, this is about
28 the lack of information provided on the hotel's reservation website that would

1 permit plaintiff to determine if there are rooms that would work for him.

2 8. After decades of research and findings, Congress found that there was
3 a “serious and pervasive social problem” in America: the “discriminatory
4 effects” of communication barriers to persons with disability. The data was
5 clear and embarrassing. Persons with disabilities were unable to “fully
6 participate in all aspects of society,” occupying “an inferior status in our
7 society,” often for no other reason than businesses, including hotels and
8 motels, failed to provide information to disabled travelers. Thus, Congress
9 decided “to invoke the sweep of congressional authority” and issue a “national
10 mandate for the elimination of discrimination against individuals with
11 disabilities,” and to finally ensure that persons with disabilities have “equality
12 of opportunity, full participation, independent living” and self-sufficiency.

13 9. As part of that effort, Congress passed detailed and comprehensive
14 regulations about the design of hotels and motels. But, as importantly,
15 Congress recognized that the physical accessibility of a hotel or motel means
16 little if the 61 million adults living in America with disabilities are unable to
17 determine which hotels/motels are accessible and to reserve them. Thus,
18 there is a legal mandate to provide a certain level of information to disabled
19 travelers.

20 10. But despite the rules and regulations regarding reservation procedures,
21 a 2019 industry article noted that: “the hospitality sector has largely
22 overlooked the importance of promoting accessible features to travelers.”

23 11. These issues are of paramount important. Persons with severe
24 disabilities have modified their own residences to accommodate their unique
25 needs and to ameliorate their physical limitations. But persons with disabilities
26 are never more vulnerable than when leaving their own residences and having
27 to travel and stay at unknown places of lodging. They must be able to ascertain
28 whether those places work for them.

FACTUAL ALLEGATIONS:

12. Plaintiff planned on making a trip in June of 2021 to the Carmel-By-The-Sea, California, area.

13. He chose the Comfort Inn Carmel By The Sea located at Ocean Ave &, Torres S Carmel-By-The-Sea, California because this hotel was at a desirable price and location.

14. Due to Plaintiff's condition, he is unable to, or seriously challenged in his ability to, stand, ambulate, reach objects, transfer from his chair to other equipment, and maneuver around fixed objects.

15. Thus, Plaintiff needs an accessible guestroom and he needs to be given information about accessible features in hotel rooms so that he can confidently book those rooms and travel independently and safely.

16. On February 8, 2021 while sitting bodily in California, Plaintiff went to the Comfort Inn Carmel By The Sea reservation website at <https://www.choicehotels.com/california/carmel/comfort-inn-hotels/ca845?source=gyxt> seeking to book an accessible room at the location.

17. This website reservation system is owned and operated by the Defendants and permits guests to book rooms at Carriage House Inn.

18. Plaintiff found that there was insufficient information about the accessible features in the "accessible rooms" at the Hotel to permit him to assess independently whether a given hotel room would work for him.

19. Here, the hotel reservation website fails to describe or provide details about the accessibility features in the guestrooms or any details such as accessible bathtub, shower, toilet, grab bars, lavatory sink.

20. With respect to the shower, the Hotel reservation website does not provide any information on existence of accessible roll-in shower/accessible bathtub/shower seat. The plaintiff mightily struggles while transferring from

1 wheelchair to shower/ bathtub. The grab bars in the shower/ bathtub are an
2 essential requirement as it helps him in assistance and transfer accordingly.
3 The hotel reservation website fails to identify or describe if there are any
4 shower seats/grab bars/detachable shower wand. Defendants' reservation
5 website fails to even state what type of bathing facilities are in a particular
6 guest room. So, when reserving a room Plaintiff does not know if he will get a
7 roll-in shower or accessible tub. Stating if a particular room is a roll-in shower
8 or tub is a threshold issue for most persons with mobility disabilities like
9 Plaintiff.

10 21. As for the toilet, there are no details about the height of the toilet and
11 the grab bars. Plaintiff cannot transfer from his wheelchair to a toilet unless
12 there are grab bars at the toilet to facilitate that transfer. The plaintiff struggles
13 mightily with toilets which are either too tall or too low, as he has to transfer
14 from his wheelchair to the toilet. He needs to know the height of the toilet. But
15 the Hotel reservation website does not provide any information about the
16 existence of grab bars for the accessible guestroom toilets.

17 22. As for the lavatory sink, Plaintiff has had tremendous difficulty with
18 using lavatory sinks in the past because sinks were cabinet style sinks or had
19 low hanging aprons that did not provide knee clearance for a wheelchair user
20 to pull up and under or, alternatively, where the plumbing underneath the sink
21 was not wrapped with insulation to protect against burning contact to his
22 knees. Here, the Hotel reservation website provides no information about the
23 accessibility of the sinks in the accessible guestroom.

24 23. As for the accessibility of the Hotel, the reservation website fails to
25 provided details on the accessible areas in the Hotel such as lobby, registration
26 desk, swimming pool, parking, etc. This is an essential information to the
27 Plaintiff.

28 24. Plaintiff does not need an exhaustive list of accessibility features.

1 Plaintiff does not need an accessibility survey to determine if a room works for
2 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
3 handful of features to be identified and described with a modest level of detail:

- 4 • For the doors, Plaintiff simply needs to know if he can get into the hotel
5 room and into the bathroom. This is a problem that has created
6 tremendous problems for the Plaintiff in the past. A simple statement
7 that the hotel room entrance and interior doors provide at least 32
8 inches of clearance is enough to provide Plaintiff this critical piece of
9 information about whether he can fit his wheelchair into the hotel
10 rooms.
- 11 • For the beds themselves, the only thing Plaintiff needs to know (and the
12 only thing regulated by the ADA Standards) is whether he can actually
13 get to (and into) the bed, i.e., that there is at least 30 inches width on the
14 side of the bed so his wheelchair can get up next to the bed for transfer.
15 This is critical information because Plaintiff cannot walk and needs to
16 pull his wheelchair alongside the bed.
- 17 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
18 know that it has sufficient knee and toe clearance so that he can use it.
19 A simple statement like “the desk provides knee and toe clearance that
20 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
21 deep” is more than sufficient. Because Plaintiff is confined to a
22 wheelchair, he needs to know this information to determine if the desk
23 is accessible to and useable by him.
- 24 • For the restroom toilet, Plaintiff only needs to know two things that
25 determine if he can transfer to and use the toilet; (1) that the toilet seat
26 height is between 17-19 inches (as required by the ADA Standards) and
27 (2) that it has the two required grab bars to facilitate transfer.
- 28 • For the restroom sink, the Plaintiff two things that will determine

whether he can use the sink from his wheelchair: (1) can he safely get his knees under the toilet? To wit: does the sink provide the knee clearance (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing under the sink wrapped with insulation to protect against burning contact? The second thing is whether the lavatory mirror is mounted at a lowered height so that wheelchair users can see it. A simple statement like: “the lavatory sink provides knee clearance of at least 30 inches wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing is wrapped, and the lowest reflective edge of the mirror is no more than 40 inches high” would suffice.

- Finally, for the shower, Plaintiff needs to know only a handful of things: (1) what type of shower it is (transfer, standard roll-in, or alternate roll-in), (2) whether it has an in-shower seat; (3) that there are grab bars mounted on the walls; (4) that there is a detachable hand-held shower wand for washing himself and (5) that the wall mounted accessories and equipment are all within 48 inches height.

25. This small list of items are the bare necessities that Plaintiff must know to make an independent assessment of whether the “accessible” hotel room works for him. These things comprise the basics of what information is reasonably necessary for Plaintiff (or any wheelchair user) to assess independently whether a given hotel or guest room meets his or her accessibility needs.

26. Other accessibility requirements such as slopes of surfaces, whether the hand-held shower wand has a non-positive shut off valve, the temperature regulator, the tensile strength and rotational design of grab bars, and so many more minute and technical requirements under the ADA are beyond what is a reasonable level of detail and Plaintiff does not expect or demand that such information is provided.

1 27. But because the Defendants have failed to identify and describe the core
2 accessibility features in enough detail to reasonably permit individuals with
3 disabilities to assess independently whether a given hotel or guest room meets
4 his accessibility needs, the Defendants fail to comply with its ADA obligations
5 and the result is that the Plaintiff is unable to engage in an online booking of
6 the hotel room with any confidence or knowledge about whether the room will
7 actually work for him due to his disability.

8 28. This lack of information created difficulty for the Plaintiff and the idea
9 of trying to book this room -- essentially ignorant about its accessibility --
10 caused difficulty and discomfort for the Plaintiff and deterred him from
11 booking a room at the Hotel

12 29. Plaintiff travels frequently and extensively, not only for non-litigation
13 reasons but also because he is an ADA tester and actively engaged in finding
14 law breaking businesses and hauling them before the courts to be penalized
15 and forced to comply with the law.

16 30. As he has in the past, Plaintiff will continue to travel to the Carmel-By-
17 The-Sea area on a regular and ongoing basis and will patronize this Hotel once
18 it has been represented to him that the Defendant has changed its policies to
19 comply with the law and to determine if the Hotel is physically accessible as
20 well as complying with required reservation procedures. Plaintiff will,
21 therefore, be discriminated against again, i.e., be denied his lawfully entitled
22 access, unless and until the Defendant is forced to comply with the law.

23 31. Plaintiff has reason and motivation to use the Defendant's Hotel
24 reservation system and to stay at the Defendant's Hotel in the future. Among
25 his reasons and motivations are to assess these policies and facilities for
26 compliance with the ADA and to see his lawsuit through to successful
27 conclusion that will redound to the benefit of himself and all other similarly
28 situated. Thus, Plaintiff routinely revisits and uses the facilities and

1 accommodations of places he has sued to confirm compliance and to enjoy
2 standing to effectuate the relief promised by the ADA.

3
4 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

5 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
6 Defendants.) (42 U.S.C. section 12101, et seq.)

7 32. Plaintiff re-pleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 33. Under the ADA, it is an act of discrimination to fail to make reasonable
11 modifications in policies, practices, or procedures when such modifications
12 are necessary to afford goods, services, facilities, privileges advantages or
13 accommodations to person with disabilities unless the entity can demonstrate
14 that taking such steps would fundamentally alter the nature of those goods,
15 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
16 12182(B)(2)(A)(ii).

17 34. Specifically, with respect to reservations by places of lodging, a
18 defendant must ensure that its reservation system, including reservations
19 made by “any means,” including by third parties, shall:

- 20 a. Ensure that individuals with disabilities can make
21 reservations for accessible guest rooms during the same
22 hours and in the same manner as individuals who do not
23 need accessible rooms;
- 24 b. Identify and describe accessible features in the hotels and
25 guest rooms offered through its reservations service in
26 enough detail to reasonably permit individuals with
27 disabilities to assess independently whether a given hotel
28 or guest room meets his or her accessibility needs; and

c. Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems.

See 28 C.F.R. § 36.302(e).

35. Here, the defendant failed to modify its reservation policies and procedures to ensure that it identified and described accessible features in the hotels and guest rooms in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs and failed to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

37. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

38. Defendants’ acts and omissions, as herein alleged, have violated the

Unruh Act by, inter alia, failing to comply with the ADA with respect to its reservation policies and practices.

39. Because the violation of the Unruh Civil Rights Act resulted in difficulty and discomfort for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

4. “For equitable nominal damages for violation of civil rights. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court finds appropriate.”

Dated: April 5, 2021

CENTER FOR DISABILITY ACCESS



By: _____

Russell Handy, Esq.
Attorneys for Plaintiff